

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE HENNEPIN COUNTY HUMAN RESOURCES BOARD

In the Matter of Edward E. Working,

Employee,

RECOMMENDATION OF DISMISSAL

vs.

Hennepin County Medical Center,

Employer.

By letter received by the Employer on January 16, 1996, Edward E. Working requested a hearing under Minn. Stat. § 197.46, the Veterans Preference Act, on his suspension with intent to dismiss from the Hennepin County Medical Center ("the Employer"). The Hennepin County Human Resources Board issued a notice of and order for prehearing conference and hearing (entitled Appeal of Suspension with Intent to Dismiss) on February 1, 1996. The notice set March 13, 1996, as the date for the prehearing conference.

On date of the prehearing conference, Mr. Working contacted the Administrative Law Judge to request a postponement of the prehearing conference due to illness. The Administrative Law Judge postponed the prehearing to April 4, 1996. The Judge's letter of March 29, 1996, setting the new prehearing date, stated in part:

Notice is hereby given that the failure of a party to appear at a prehearing conference or the hearing constitutes a default under Hennepin County Human Resources Rule 17.5.C and Minn.R. 1400.6000. Thus, if Mr. Working fails to appear at the prehearing conference or hearing, his appeal may be dismissed and his discharge affirmed.

Mr. Working telephoned the Administrative Law Judge prior to the rescheduled prehearing conference and stated that he had been unable to retain an attorney, felt unable to represent himself, and wanted to know if he could just resign. The Judge recommended that Mr. Working contact the County Attorney to negotiate a conclusion to the matter and that he attend the prehearing conference in any event.

Sara Wahl, Senior Assistant County Attorney, Office of the Hennepin County Attorney, 2000 Government Center, Minneapolis Minnesota 55487, appeared at the prehearing conference on April 4, 1996, on behalf of the Employer, Hennepin County Medical Center. Mr. Working failed to appear at the prehearing conference. Ms. Wahl reported that Mr. Working had left her a message stating that he wished to resign or withdraw his appeal and stated that she would attempt to work that out prior to final Board action.

Based upon the record herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Hennepin County Human Resources Board, acting as a Veterans Preference Hearing Board under Minn. Stat. § 197.46, DISMISS the appeal of Edward E. Working due to his default.

Dated: April 9, 1996.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Hennepin County Human Resources Board will make the final decision after a review of the record. Under Hennepin County Human Resources Board Rule 17.6, any objections to this report must be filed within 14 calendar days following receipt with Rafael A. Viscasillas, Hennepin County Human Resources Director, A-400 Government Center, Minneapolis, Minnesota 55487-0040.

MEMORANDUM

The appeal filed by Mr. Working and noticed for hearing by the Board was brought under Minn. Stat. §§ 197.46 and 383B.38, subd. 1a (1994). Under Minn. Rule 1400.6000, a party defaults by failing to attend a prehearing conference without the prior approval of the Judge. Under Hennepin County Human Resources Board Rule § 17.5.C, failure of a party to appear before an Administrative Law Judge without good cause constitutes a default. Under either standard, Mr. Working has defaulted in this matter. HCMC has requested that the appeal be dismissed. Mr. Working is being paid his normal salary during the pendency of this appeal. Under these circumstances, dismissal of the appeal is the appropriate action.

S.M.M.